

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT STEINBERG, ROBERT N. ADLER,
FRANK V. FINIZIA, BRIAN C. LATZ,
GERARD SCORZIELLO, JEFF QUINN,
JOHN VOLPE, PAUL ROLES, JANEMARIE
LENIHAN, DAVID ANDREW GASMAN,
ISRAEL HARMAN, JOHN MASKUBI,
VERNON D. BROWN, JOSEPH STOWELL,
JR., KYLE R. ARMITAGE, CHRISTOPHER
D. BART, and ERIC N. WULFF, on behalf of
themselves, the general public, and all others
similarly situated,

Plaintiffs,

vs.

MORGAN STANLEY & CO.
INCORPORATED and MORGAN
STANLEY DW INC.,

Defendants.

CASE NO. 3:06-cv-02628-BEN-NLS

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND
AWARDING ATTORNEYS' FEES,
LITIGATION EXPENSES, AND
PLAINTIFF ENHANCEMENTS AND
FINAL JUDGMENT**

DATE: June 1, 2009
TIME: 10:30 a.m.
CTRM: 3, 4th Floor
JUDGE: HON. ROGER T. BENITEZ

1 Upon a review of the May 1, 2009 Joint Status Report Regarding Results Of Notice
2 Program To Provide Class Members An Additional Opportunity To Submit Claims To Participate
3 In The Settlement (the "Joint Status Report"), the exhibits thereto, and the briefing submitted in
4 connection with the November 3, 2008 hearing, the hearing before this Court on November 3,
5 2008, the January 20, 2009 filing by plaintiffs' counsel with respect to itemized fee and expense
6 documentation, and all the proceedings herein, the Court finds and orders as follows:

7 1. For the purposes of this Order, the Court adopts all defined terms as set forth in the
8 "Joint Stipulation and Settlement Agreement" ("Stipulation"), Docket No. 15.

9 2. This Court has jurisdiction over the subject matter of this litigation and over all
10 parties and Class Members in this litigation. The Court finds, for purposes of settlement only, that
11 the Class meets the requirements for certification under Fed. R. Civ. P. 23(a) and 23(b)(3) in that:
12 (1) the Class, which consists of 20,063 members, is so numerous that joinder is impracticable; (2)
13 there are questions of law and fact that are common to all Class Members, which questions
14 predominate over individual issues; (3) the Class Representatives' claims are typical of the claims
15 of the Class Members; (4) Class Counsel have fairly and adequately protected the interests of the
16 Class; and (5) a class action is superior to other available methods for the fair and efficient
17 adjudication of the controversy.

18 3. This Order shall not be cited in any matter for the purpose of seeking class or
19 collective action certification or class or collective action notice.

20 4. The Court finds that the distribution of the "Notice to Class Members Regarding
21 Pendency of a Class and Collective Action and Notice of Hearing on Proposed Settlement," as
22 described in the Declaration of Jonathan Paul, representative of Rust Consulting, and the
23 Publication of the Summary Notice in the *Wall Street Journal*, constituted the best notice
24 practicable under the circumstances and fully met the requirements of due process.

25 5. The Court finds that the Settlement, as modified by the March 4, 2009 order of this
26 Court and the agreements among the parties set forth in the May 1, 2009 Joint Status Report, is
27 fair, reasonable, and in the best interests of the Class, and hereby grants final approval of the
28 Settlement. The Court finds that the Settlement was the product of protracted, arm's-length and
non-collusive negotiations between experienced counsel. The Court has carefully weighed the

1 factors outlined in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), and concludes
 2 that the Settlement is fundamentally fair and reasonable in light of the uncertainty of Plaintiffs'
 3 claims and the risks and costs associated with further litigation. The parties are ordered to carry
 4 out the Settlement as provided in the Stipulation.

5 6. The Court finds that there was only one (1) written objection to the Settlement,
 6 filed by Abraham David Goldstein, Docket No. 30. The Court finds that Mr. Goldstein's
 7 objection is without merit and is overruled.

8 7. Plaintiffs' counsel have moved for an award of attorneys' fees in the amount of
 9 \$12,500,000, which represents 25% of the settlement fund, plus litigation expenses in the amount
 10 of \$100,000. That motion is granted. The Court finds that Plaintiffs' counsel have skillfully
 11 advanced novel and untested legal theories on a contingent-fee basis for over three years, and their
 12 efforts have resulted in a substantial payment to the Class. The Court has carefully considered the
 13 results Plaintiffs' counsel have achieved, the risk of litigation, the skill required and the quality of
 14 the work, the contingent nature of the fee and the financial burden carried by Plaintiffs' counsel,
 15 and awards made in similar cases. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th
 16 Cir. 2002). Additionally, the Court notes that the "benchmark" fee in the Ninth Circuit is 25%.
 17 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989). The Court further
 18 finds that Plaintiffs' counsel's expenses were reasonably incurred in prosecuting this case. To the
 19 extent that Mr. Goldstein's objection may be construed as an objection to the proposed attorneys'
 20 fees, that objection is overruled. Pursuant to Section VI, paragraph 2.9.1 of the Stipulation,
 21 Morgan Stanley shall wire the attorneys' fees and litigation expenses to the law firm of Wolf
 22 Haldenstein Adler Freeman & Herz LLP within 20 days after the Effective Date, with such
 23 amount to be further divided as provided below amongst all Plaintiffs' counsel as promptly as
 24 feasible in light of the agreements among counsel, including agreements to mediate/arbitrate. This
 25 Court retains jurisdiction to determine any disputes among counsel that are not resolved under
 those agreements.

Recipient of Funds

Amount

For the Benefit Of:

26 An escrow account to be
 27 designated under the joint
 28 control of Jeffrey G. Smith,
 Jerry K. Cimmet, and Max

47.2% of the fees
 awarded plus
 expenses to be
 awarded in

Wolf Haldenstein Adler Freeman &
 Herz, LLP; Law Office of Jerry K.
 Cimmet; Law Office of John M.
 Kelson; Folkenflik & McGerity; and

1	Folkenflik	proportion to the amounts sought	Winne, Banta, Hetherington, Basralian & Kahn, P.C.
2			
3	Dostart Clapp Gordon & Coveney, LLP	47.2% of the fees awarded plus expenses to be awarded in proportion to the amounts sought	Dostart Clapp Gordon & Coveney, LLP and Strauss & Asher
4			
5	Futterman Howard Watkins Wylie & Ashley, Chtd.	4.72% of the fees awarded plus expenses to be awarded in proportion to the amounts sought.	Futterman Howard Watkins Wylie & Ashley, Chtd; The Coffman Law Firm; DuretteBradshaw, PLC; Shaheen Novoselsky Staat Filipowski & Eccleston P.C.; Diamond Hasser & Frost; and Nagel Rice, LLP
6			
7			
8			
9	Carlson Lynch	0.88%	Carlson Lynch

10 8. Pursuant to Section VI, paragraph 2.9.1 of the Stipulation, the law firm of Wolf
11 Haldenstein Adler Freeman & Herz LLP shall provide counsel for Morgan Stanley with the
12 pertinent taxpayer identification numbers and Form W-9s for reporting purposes in time for
13 Morgan Stanley to timely undertake such reporting.

14 9. Pursuant to Section VI, paragraph 2.9.2 of the Stipulation, Plaintiffs' counsel have
15 requested that the Court award enhancement payments of \$20,000 each to the 17 named Plaintiffs
16 and \$2,500 each to the 41 Key Class Members, provided the named Plaintiffs and/or Key Class
17 Members sign a full, general, and comprehensive release of the Class Representatives' Released
18 Claims as set forth in Section VI, paragraph 1.11 and Exhibit 9 of the Stipulation. After
19 considering the services these individuals performed on behalf of the Class and the risks they
20 undertook in bringing the litigation, the Court hereby approves such payments to each such
21 individual whose signed general release has been submitted to the Claims Administrator and
22 counsel for Morgan Stanley.

23 10. The Court hereby approves the payment of up to \$300,000 to the Claims
24 Administrator, Rust Consulting, from the settlement fund as full compensation for its services in
25 administering the Settlement. The Court also approves the request by Wolf Haldenstein Adler
26 Freeman & Herz LLP for reimbursement from the settlement fund of the \$16,005.20 it paid to
27 JAMS for the services of Judge Legge.
28

1 11. The Court will retain jurisdiction for purposes of enforcing this Settlement,
2 addressing settlement administration matters, and addressing such post-judgment matters as may
3 be appropriate under court rules or applicable law.

4 IT IS SO ORDERED.

5 DATED: July 10, 2009


HON. ROGER T. BENITEZ
U.S. District Court Judge

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